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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIE ELLEN CALDERON,

Defendant and Appellant.

E073535

(Super.Ct.No. FWV1405202)

OPINION

APPEAL from the Superior Court of San Bernardino County. Katrina West,
Judge. Affirmed.

Heather E. Shallenberger, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On December 17, 2014, a felony complaint charged defendant and appellant Julie
Ellen Calderon with grand theft by embezzlement with a value exceeding \$950, to wit

\$128,792, under Penal Code section 487, subdivision (a) (count 1); and embezzlement by public or private officer with a value exceeding \$950, to wit \$128,792, under Penal Code section 504 (count 2).

On December 17, 2015, pursuant to a plea agreement, defendant pled guilty to count 1 and the trial court dismissed count 2. Defendant also agreed to pay restitution as party of her guilty plea. The actual amount, however, was to be determined at sentencing.

At the sentencing hearing on January 22, 2016, the trial court placed defendant on formal probation for a period of three years. Under the terms and conditions of probation, the court ordered defendant to serve 180 days in county jail with the option to serve this time on work release. She received credit for two days served. Although the issue of restitution was addressed, “victim restitution was not established.”

On June 3, 2016, the probation department filed a memorandum requesting that restitution be ordered in the amount of \$128,792. No supporting documents were included.

On January 9, 2018, the probation department filed a second memorandum requesting the same amount of restitution and provided 204 pages of documentation to support the loss.

On July 12, 2019, the trial court held a restitution hearing. The sentencing court ordered that defendant pay restitution in the amount of \$128,500.

On August 21, 2019, defendant filed an appeal contesting the order of restitution.

B. FACTUAL HISTORY

According to the probation report, on August 18, 2014, Charles Blank and James Parson filed a report with the police that defendant had embezzled funds from the Carbon Canyon I Homeowners Association (HOA) while acting in her capacity as the treasurer of the HOA.

Blank and Parson stated that, at defendant's suggestion, the HOA board agreed to move funds from the HOA's Schwab account into a money market account. After the money market account was opened, fellow board members noticed that defendant was "making cash withdrawals, ranging from a few hundred dollars to several thousand out at a time, throughout the year from the account." Defendant explained that she used the money to pay bills on behalf of the HOA with cash "to get a better rate from vendors."

Eventually, Blank and Parson conducted an audit of the HOA funds. When defendant refused to provide statements of the money market account, Blank obtained copies of the statements from the bank. He noticed that defendant had taken cash out of the money market account without board approval. When he asked defendant about the withdrawals, she "refused to answer . . . and would not explain why she took the money or where it all went." An accountant later determined "that the total unaccounted monies is \$128,000."

When the probation department interviewed defendant, she "admitted to withdrawing cash from the account but could not remember the exact amount but estimated to be in excess of \$100,000." She then stated that "the cash was used to pay bills and vendors, and attempted to get better prices for service providers." Defendant

also stated that the HOA board “instructed her to make transactions this way at a meeting.” In fact, defendant stated that Blank “would call and say he needed cash for bills and she would withdraw the cash by herself and pay [him].” Defendant did admit to having a gambling problem and that she stole from the HOA to support her gambling habit. She estimated that she misappropriated over \$100,000 from the HOA.

Contrary to defendant’s statements to the probation department, the board members stated that there were no meetings giving defendant authority to withdraw cash. There had “never been any discussion or approval of anyone making cash withdrawals or paying bills with cash or any sort of business conducted with cash.” Instead, they stated that all transactions were usually made with a check or by electronic transfer. Moreover, there were no documents found that gave authority for defendant to withdraw cash from the HOA account.

DISCUSSION

After defendant appealed, and upon her request, this court appointed counsel to represent her. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues; and has requested this court to undertake a review of the entire record. Pursuant to *Anders*, counsel identified the following issues to assist the court in its search of the record for error:

1. “Whether [defendant]’s due process right to notice of the amount of restitution sought and an opportunity to challenge that amount was violated when evidence of invoices paid on behalf of the victim were destroyed?”

2. “Whether the sentencing court had jurisdiction to order restitution as a condition of probation after [defendant] had successfully completed the period of probation?”

We offered defendant an opportunity to file a personal supplemental brief, but she has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error, and find no arguable issue for reversal on appeal.

DISPOSITION

The judgment is affirmed.

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MILLER

Acting P. J.

We concur:

SLOUGH

J.

RAPHAEL

J.